

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patentees: Robert D. Haskins and Dale P. Nielsen Docket: ZIP00-01
Application No. 09/715,641
Patent number: 7,672,998 Examiner : Jerry B. Dennison
Filing date: November 17, 2000 Art Unit : 2443
Issue date: March 2, 2010
Title: Apparatus and Methods for Controlling the Transmission of Messages

Office of Petitions
Attn: Attorney Faison-Ball
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO DECISION ON THE REQUEST FOR PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705 AND 37 C.F.R. §1.703

U.S. patent number 7,672,998 issued on March 2, 2010 with 1295 days of patent term adjustment (PTA). The decision having an e-mail notification date of November 17, 2010 (the Decision) adjusted the PTA to 1253 days. A fee of \$200.00 was paid.

REMARKS

The Decision stated:

“Applicant fails to account ... for the 95 day examination delay ... for the period January 30, 2006 to May 5, 2006, and neither does applicant provide a basis for the failure to account for those periods of delay.”

Applicants respectfully submit the 95 day delay is (and should be) counted as PTO (days). See attached Patent Term Adjustment Page items 27-30.

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As to the alleged miscalculation of the PTA due to appellate review, Applicants respectfully disagree with the PTO's interpretation of the statute. In particular, for Part (A) the USPTO states that an appeal is "taken" (and PTA counting-started) only after the applicant files the appeal brief while for Part (B) the USPTO states that time is being consumed by appellate review (and PTA counting-delayed) as soon as a notice of appeal is filed. Applicants suggest that a correct interpretation is that "appellate review by the Board" for Part (B) does not begin until after the examiner answer. In addition, here, the rejection was effectively withdrawn more than four months after the appeal brief was filed.

Patentees hereby request reconsideration of the Patent Term Adjustment (PTA) accorded the above-referenced patent. Reconsideration of the final PTA calculation to increase total PTA from 1,253 to at least 1,348 days, is respectfully requested.

Calculation Summary

Patentees assert that the patent is entitled to at least 1,348 days of PTA.

Recalculation of PTA

Thus, at least 1348 PTA days should have been granted to patentees, which is at least an additional 95 days.

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Summary

Patentees respectfully request that a Certificate of Correction be granted with at least 1348 days of PTA under 35 U.S.C. §154(b) for 95 additional days as calculated. In the event that other issues arise, it is respectfully requested and encouraged to contact patentees' representatives at the telephone number provided.

/Barry Gaiman/

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Attorney Docket No.: ZIP00-01
Dated: December 13, 2010
Attachments: PTA Tab from Image File Wrapper for 09/715,641

Patent Term Adjustment

Filing or 371(c) Date:	11-17- 2000	Overlapping Days Between {A and B} or {A and C}:	108
Issue Date of Patent:	03-02- 2010	Non-Overlapping USPTO Delays:	1480
A Delays:	931	PTO Manual Adjustments:	-42
B Delays:	657	Applicant Delays:	185
C Delays:	0	Total PTA Adjustments:	1253

Patent Term Adjustment History



119	11-09- 2010	Adjustment of PTA Calculation by PTO	615	0
118	11-09- 2010	Adjustment of PTA Calculation by PTO	657	0
109.5	06-15- 2006	PTA 36 Months	657	0
109	03-02- 2010	Patent Issue Date Used in PTA Calculation	0	
108	01-22- 2010	Export to Final Data Capture	0	
107	01-21- 2010	Dispatch to FDC	0	
106	01-21- 2010	Application Is Considered Ready for Issue	0	
105	01-15- 2010	Issue Fee Payment Verified	0	
104	01-15- 2010	Issue Fee Payment Received	0	
103	12-23- 2009	Finished Initial Data Capture	0	
102	12-11- 2009	Export to Initial Data Capture	0	
101	12-07- 2009	Electronic Review	0	

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97	12-04-2009	Mail Notice of Allowance	21	87
96	12-01-2009	Issue Revision Completed	0	
95	12-01-2009	Notice of Allowance Data Verification Completed	0	
94	12-01-2009	Case Docketed to Examiner in GAU	0	
93	11-24-2009	Allowed Case Returned to the Examiner for Clerical Processing	0	
92	11-24-2009	Document Verification	0	
91	11-23-2009	Examiner Interview Summary Record (PTOL - 413)	0	
90	11-24-2009	Examiner's Amendment Communication	0	
89	11-23-2009	Notice of Allowability	0	
88	09-11-2009	Date Forwarded to Examiner	0	
87	07-13-2009	Response after Non-Final Action	0	
86	07-13-2009	Mail Examiner Interview Summary (PTOL - 413)	0	
85	07-09-2009	Examiner Interview Summary Record (PTOL - 413)	0	
84	05-11-2009	Mail Non-Final Rejection	0	
83	05-11-2009	Non-Final Rejection	0	
82	03-04-2009	Date Forwarded to Examiner	0	
81	02-24-2009	Response after Non-Final Action	0	
80	11-25-2008	Mail Non-Final Rejection	0	

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79	11-24-2008	Non-Final Rejection	0
78	10-06-2008	Case Docketed to Examiner in GAU	0
77	09-12-2008	Date Forwarded to Examiner	0
76	08-18-2008	RCE- AF Processed	0
75	09-12-2008	Date Forwarded to Examiner	0
74	09-04-2008	Request for Continued Examination (RCE)	0
73	09-12-2008	Disposal for a RCE / CPA / R129	0
72	09-04-2008	Workflow - Request for RCE - Begin	0
71	08-26-2008	Mail Advisory Action (PTOL - 303)	0
70	08-26-2008	Advisory Action (PTOL-303)	0
69	08-25-2008	Date Forwarded to Examiner	0
68	08-18-2008	Amendment after Final Rejection	0
67	08-13-2008	Mail Examiner Interview Summary (PTOL - 413)	0
66	08-11-2008	Examiner Interview Summary Record (PTOL - 413)	0
65	06-16-2008	Mail Final Rejection (PTOL - 326)	0
64	06-14-2008	Final Rejection	0
63	04-15-2008	Date Forwarded to Examiner	0
62	03-20-2008	Response after Non-Final Action	100 59

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61	03-14-2008	Mail Notice of Informal or Non-Responsive Amendment	0
60	01-05-2008	Date Forwarded to Examiner	0
59.1	12-11-2007	Informal or Non-Responsive Amendment after Examiner Action	0
59	12-11-2007	Response after Non-Final Action	0
58	12-17-2007	Mail Examiner Interview Summary (PTOL - 413)	0
57	12-10-2007	Examiner Interview Summary Record (PTOL - 413)	0
56	09-11-2007	Mail Non-Final Rejection	0
55	09-04-2007	Non-Final Rejection	0
54	07-27-2007	Correspondence Address Change	0
53	07-02-2007	Mail Examiner Interview Summary (PTOL - 413)	0
52	03-18-2007	Examiner Interview Summary Record (PTOL - 413)	0
51	06-22-2007	Date Forwarded to Examiner	0
50	06-19-2007	Amendment Submitted/Entered with Filing of CPA/RCE	0
49	06-22-2007	Date Forwarded to Examiner	0
48	06-19-2007	Request for Continued Examination (RCE)	0
47	06-22-2007	Disposal for a RCE / CPA / R129	0
46	06-19-2007	Workflow - Request for RCE - Begin	0
45	04-19-2007	Mail Final Rejection (PTOL - 326)	0

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44	04-16-2007	Final Rejection	0
43	03-02-2007	Date Forwarded to Examiner	0
42	02-09-2007	Response after Non-Final Action	60 38
41	02-09-2007	Request for Extension of Time - Granted	0
40	01-24-2007	Mail Examiner Interview Summary (PTOL - 413)	0
39	01-12-2007	Examiner Interview Summary Record (PTOL - 413)	0
38	09-11-2006	Mail Non-Final Rejection	0
37	09-05-2006	Non-Final Rejection	0
36	07-14-2006	Date Forwarded to Examiner	0
35	06-16-2006	Amendment Submitted/Entered with Filing of CPA/RCE	0
34	07-14-2006	Date Forwarded to Examiner	0
33	06-16-2006	Request for Continued Examination (RCE)	0
32	07-14-2006	Disposal for a RCE / CPA / R129	0
31	06-16-2006	Workflow - Request for RCE - Begin	0
30	05-05-2006	Mail Examiner's Answer	95 24
29	05-01-2006	Examiner's Answer to Appeal Brief	0
28	02-23-2006	Date Forwarded to Examiner	0
27	02-13-2006	Appeal Brief Filed	0

26	01-12-2006	Notice -- Defective Appeal Brief	0
25	11-02-2005	Date Forwarded to Examiner	0
24.1	09-30-2005	Defective / Incomplete Appeal Brief Filed	0
24	09-30-2005	Appeal Brief Filed	0
23	09-30-2005	Request for Extension of Time - Granted	0
22	07-25-2005	Notice of Appeal Filed	0
21	05-27-2005	Mail Final Rejection (PTOL - 326)	0
20	05-26-2005	Final Rejection	0
19	04-05-2005	Date Forwarded to Examiner	0
18	03-07-2005	Response after Non-Final Action	5 17
17	12-02-2004	Mail Non-Final Rejection	13 13
16	11-29-2004	Non-Final Rejection	0
15	09-25-2004	IFW TSS Processing by Tech Center Complete	0
14	09-25-2004	Date Forwarded to Examiner	0
13	07-19-2004	Response after Non-Final Action	20 10
12	07-19-2004	Request for Extension of Time - Granted	0
11	07-19-2004	Workflow incoming amendment IFW	0
10	03-29-2004	Mail Non-Final Rejection	802 -1

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9	03-21-2004	Non-Final Rejection	0
8	02-10-2004	Case Docketed to Examiner in GAU	0
7	04-22-2003	Case Docketed to Examiner in GAU	0
6.7	02-24-2003	Information Disclosure Statement (IDS) Filed	0
6	02-24-2003	Information Disclosure Statement (IDS) Filed	0
5	04-20-2001	Case Docketed to Examiner in GAU	0
4	03-29-2001	Application Dispatched from OIPE	0
3	03-27-2001	Correspondence Address Change	0
2	12-22-2000	IFW Scan & PACR Auto Security Review	0
1	11-17-2000	Initial Exam Team nn	0